

ESTTA Tracking number: **ESTTA636898**

Filing date: **11/04/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215246
Party	Defendant Empire Resorts, Inc.
Correspondence Address	CHARLES N QUINN FOX ROTHSCHILD LLP 747 CONSTITUTION DRIVE, SUITE 100 EAGLEVIEW CORPORATED CENTER EXTON, PA 19341 UNITED STATES cquinn@foxrothschild.com, dmcgregor@foxrothschild.com, cesch@foxrothschild.com, ipdocket@foxrothschild.com, dwilliams@foxrothschild.com, cquinn@frof.c
Submission	Motion to Compel Discovery
Filer's Name	CHARLES N. QUINN
Filer's e-mail	cquinn@frof.com, dwilliams@frof.com, cesch@frof.com, dmcgregor@frof.com, ipdocket@frof.com
Signature	/Charles N. Quinn/
Date	11/04/2014
Attachments	3891_001.pdf(272101 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV, LLC	:	Opposition 91215246
	:	
	Opposer :	Application 85/736,471
v.	:	
	:	Mark: "M (stylized)"
EMPIRE RESORTS, INC.	:	
	:	Class: 28
	Applicant :	
	:	Interlocutory Attorney:
		Andrew P. Baxley

EMPIRE'S MOTION TO SUSPEND RULE 2.127(d)

Applicant, Empire Resorts, Inc. (hereinafter "Empire") moves that the Board suspend rule 2.127(d) in the above-captioned trademark opposition proceeding and permit Empire to submit for the Board's immediate consideration Empire's accompanying Motion to Compel Production of Documents Under 37 CFR 2.120(e).

On 1 July 2014, Empire served a First Request for Production of Documents on Opposer, LVGV, LLC.

On 12 August 2014, LVGV served LVGV's responses to Empire's Request for Production of Documents.

On 24 September 2014, Empire filed a Motion for Judgment on the Pleadings. On 8 October 2014, proceedings were suspended pending disposition of Empire's Motion for Judgment on the Pleadings and LVGV's Motion for Consolidation of this Opposition with other oppositions that had been filed by LVGV against others of Empire's pending applications. The Order granting the suspension states in pertinent part; "Any paper filed during the pendency of

this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).”

Despite representations made in LVGV’s 12 August 2014 response that documents responding to Empire’s various document production requests would be forthcoming, no such documents had been received by Empire’s counsel as of 9 October 2014. On that date, Empire’s counsel inquired via e-mail of LVGV’s counsel as to when Empire’s counsel could expect to receive the requested documents. On 14 October 2014 LVGV’s counsel in an email to the undersigned promised “to get back” to Empire’s counsel later that week or early the following week with “a time frame” for LVGV’s production. Neither the promised “time frame” nor any documents have been forthcoming from LVGV.

The Board may suspend the rules pursuant to 37 CFR 2.148.

Accordingly, Empire moves this Board for an order suspending rule 2.127(d) and permitting Empire to file the attached Motion to Compel Production of Documents. Empire’s defense of its trademark application 85/736,471 will be greatly prejudiced by any further delay in receiving from LVGV the responsive discovery documents. LVGV promised these discovery documents to Empire prior to the suspension of proceedings and Empire is entitled to same under rule 2.120.

Date: November 4, 2014

/Charles N. Quinn/
Charles N. Quinn
Attorney for Applicant
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100
Exton, PA 19341
610-458-4984
610-458-7337 (fax)
cquinn@foxrothschild.com
www.foxrothschild.com

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC

v.

EMPIRE RESORTS, INC.

Opposer

Applicant

:
: Opposition 91215246
:
: Application 85/736,471
:
: Mark: "M" (stylized)
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Empire Resorts, Inc.'s Motion to Suspend Rule 2.127(d) was served on Opposer's counsel on the date listed below by email, pursuant to an agreement between the parties, addressed as follows:

Hara K. Jacobs
Troy Larson
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
jacobsh@ballardspahr.com
larsont@ballardspahr.com

Date: November 4, 2014

/Charles N. Quinn/
Charles N. Quinn

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC	:	Opposition 91215246
	:	
	Opposer	: Application 85/736,471
v.	:	
	:	Mark: "M (stylized)"
Empire Resorts, Inc.	:	
	:	Class: 28
	Applicant	:
	:	Interlocutory Attorney:
		Andrew P. Baxley

MOTION TO COMPEL PRODUCTION OF DOCUMENTS UNDER 37 CFR 2.120(e)

This is a Motion by Applicant, Empire Resorts, Inc. (hereinafter "Empire") to Compel Production of Documents by the Opposer, LVGV LLC (hereinafter "LVGV") in the above-captioned trademark opposition proceeding.

On 1 July 2014, Empire served a First Request for Production of Documents on Opposer.

On 12 August 2014, LVGV served LVGV's response to Empire's Request for Production of Documents.

On 8 October 2014, proceedings were suspended pending disposition of Empire's Motion for Judgment on the Pleadings and LVGV's Motion for Consolidation of this Opposition with other oppositions that had been filed by LVGV against others of Empire's pending applications.

Despite representations made in LVGV's 12 August 2014 response that documents responding to Empire's various document production requests would be forthcoming, no such documents had been received by Empire's counsel as of 9 October 2014. On that date, Empire's counsel inquired via e-mail of LVGV's counsel as to when Empire's counsel could expect to receive the requested documents. On 14 October 2014 LVGV's counsel in an email to the

undersigned promised “to get back” to us later that week or early the following week with “a time frame” for LVGV’s production. Neither the promised “time frame” nor any documents have been forthcoming.

When discovery requests are served before a suspension of proceedings, the obligation to respond to the discovery remains on-going as is clearly set forth in 37 CFR 2.120(e)(2) and Section 502 of the Trademark Manual of Examining Procedure. The suspension of proceedings does not suspend the obligation to respond fully to discovery requests that were served before the suspension order. In this case, LVGV is nearly three months delinquent in completing its response to Empire’s document production requests by supplying the promised documents, for which Empire is still waiting.

Accordingly, Empire moves this Board for an order requiring LVGV to furnish documents to Empire in accordance with LVGV’s 12 August 2014 response to Empire’s 1 July 2014 document production request.

Empire respectfully solicits issuance of an appropriate form of order requiring LVGV to produce the promised documents.

Date: 4 November 2014

/Charles N. Quinn/
Charles N. Quinn
Attorney for Applicant
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100
Exton, PA 19341
610-458-4984
610-458-7337 (fax)
cquinn@foxrothschild.com
www.foxrothschild.com

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC	:	Opposition 91215246
	:	
	Opposer	: Application 85/736,471
v.	:	
	:	Mark: "M (stylized)"
Empire Resorts, Inc.	:	
	:	Class: 28
	Applicant	:
	:	Interlocutory Attorney:
	:	Andrew P. Baxley

DECLARATION OF CHARLES N. QUINN

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United States, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 747 Constitution Drive, Suite 100, Exton, Pennsylvania, 19341, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office pursuant to registration 27,223, and am the attorney of record for the Applicant, Empire Resorts, Inc., in the above-referenced matter.

2. On 9 October 2014, I inquired of counsel for LVGV as to the whereabouts of documents to complete LVGV's 12 August 2014 response to Empire's 1 July 2014 First Request for Production of Documents. I made this inquiry to LVGV's counsel via e-mail. On 14 October 2014, I received a reply to my e-mail in which counsel for LVGV stated "We are in the process of gathering responsive documents, and I expect to get back to you late this week or

early next week with the timeframe for our production.” Despite the representation made by counsel for LVGV in the 14 October e-mail, no documents have been forthcoming.

3. Accordingly, I have made a good faith effort by correspondence to resolve with LVGV’s counsel the issues presented by the instant Motion, but the parties have been unable to resolve their differences and LVGV has not complied with its obligation to supply the required documents to Empire. I make this assertion and representation to support a Motion to Compel Production of Documents Under 37 CFR 2.120(e).

4. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq.

Respectfully submitted,

FOX ROTHSCHILD LLP

/Charles N. Quinn/
Charles N. Quinn
Darcy A. Williams
747 Constitution Drive, Suite 100
Exton, PA 19341
Tel: 610-458-4984
cquinn@foxrothschild.com
dwilliams@foxrothschild.com
Attorneys for Opposer

Dated: 4 November 2014

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LVGV LLC

v.

Empire Resorts, Inc.

Opposer

Applicant

:
: Opposition 91215246
:
: Application 85/736,471
:
: Mark: "M" (stylized)
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Empire Resorts, Inc.'s Motion to Compel Production under 37 CFR 2.120(e) served on Opposer's counsel on the date listed below by email, pursuant to an agreement between the parties, addressed as follows:

Hara K. Jacobs
Troy Larson
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
jacobsh@ballardspahr.com
larsont@ballardspahr.com

Date: 4 November 2014

/Charles N. Quinn/
Charles N. Quinn